

No. 11756

United States
Circuit Court of Appeals
For the Ninth Circuit

THE ALASKA WORLD WAR II VETERANS'
BOARD and ROBERT ELLIS, JOHN S.
HELLENTHAL, JOHN M. CROSS, L. EM-
BERT DEMMERT, and PAUL SOLKA, Jr.,
members of said Board, and NORMAN
HALEY, executive officer of said Board,

Appellants,

vs.

TERRITORY OF ALASKA, ex rel
OSCAR G. OLSON,

Appellee.

Transcript of Record

Upon Appeal from the District Court, Territory of Alaska,
Division Number One

FILED
NOV 4 - 1947

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

FAULKNER AND BANFIELD,
Juneau, Alaska.

For Appellants.

RALPH J. RIVERS,
Territorial Attorney General,
Juneau, Alaska.

For Appellees.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 5753-A

TERRITORY OF ALASKA, ex rel
OSCAR G. OLSON,

Plaintiff,

vs.

THE ALASKA WORLD WAR II VETERANS'
BOARD and ROBERT E. ELLIS, JOHN S.
HELLENTHAL, JOHN M. CROSS, L. EM-
BERT DEMMERT, and PAUL SOLKA, Jr.,
members of said Board, and NORMAN
HALEY, executive officer of said Board,
Defendants.

COMPLAINT AND PETITION FOR WRIT
OF MANDAMUS

To the Honorable George W. Folta, Judge of the
Above Entitled Court:

The plaintiff, Oscar G. Olson, respectfully repre-
sents to this court:

1. That he is the duly elected, qualified and act-
ing Treasurer of the Territory of Alaska.
2. That the defendant, The Alaska World War
II Veterans' Board, hereinafter referred to
as the Board, is a board organized and created
by and under the provisions of Chapter 27,
Session Laws of Alaska, 1946.
3. That the defendants, Robert E. Ellis, John S.
Hellenthal, John M. Cross, L. Embert Dem-

mert and Paul Solka Jr., are the duly appointed and acting members of said Board; that the defendant, Norman Haley, is the duly appointed and acting executive officer of said Board, with the title "Commissioner of Veterans' Affairs."

4. That Section 5 of said Chapter 27, Session Laws of Alaska, 1946, provides for an appropriation of \$350,000.00 to be paid to the Board and to be repaid to the Territorial general treasury "as soon as revenues collected through the tax imposed by this act will permit, but not later than four years after the effective date hereof." That the tax referred to is the gross sales and services tax imposed by Section 3 of said Act. That said \$350,000.00 was thereupon transferred to the World [1*] War II Veterans' Fund under the jurisdiction of said Board, as provided by said Act.
5. That since said effective date, to wit, the third day of April, 1946, revenues collected by said tax exceed one and three-quarter million dollars, including \$304,000 collected for the quarter ending June 30, 1947; that revenues anticipated from said tax for the quarter ending September 30, 1947, and payable during October, 1947, will equal approximately \$300,000; that revenues collected through said tax now permit repayment by said Board to the general treasury.

* Page numbering appearing at foot of page of original certified Transcript of Record.

6. That demand has been made upon the Board to repay to the territorial treasury said loan on an installment basis as follows: One-half thereof on July 3, 1947, being the amount of \$175,000, and the balance on October 31, 1947; that said Board has refused to comply with said demand.
7. That a serious financial shortage exists with regard to the general fund of the territorial treasury, and that the aforesaid refusal on the part of said Board is arbitrary and unreasonable and amounts to an abuse of authority contrary to law, which greatly hampers carrying out of general territorial functions.
8. That plaintiff has no plain, speedy and adequate remedy in the due course of law to compel said Board to perform its duty of making repayment to the general treasury as aforesaid.

Wherefore, plaintiff prays that an Order be granted by this Court for the issuance of an Alternative Writ of Mandamus commanding and directing the defendants, the Board and said members and Norman Haley, Commissioner of Veterans' Affairs, to repay said money to the territorial treasury through issuance of appropriate vouchers executed by said Commissioner, one of said vouchers in the sum of \$175,000 to be issued forthwith and the other in the same amount to be issued on October 31, 1947, or, failing to pay said first installment forthwith, to appear before this Court upon

a day to be named in said Writ, and show cause, if any there be, why they have not done so and why a peremptory writ of mandamus should not be issued requiring them to repay as aforesaid.

RALPH J. RIVERS,

Attorney General for Alaska.

FRANK L. OLIVER,

Assistant Attorney General for Alaska.

Attorneys for Plaintiff. [2]

United States of America,
Territory of Alaska—ss.

Oscar G. Olson, being first duly sworn, on oath deposes and says: That he is the plaintiff above named and that he is the duly elected, qualified and acting Treasurer for the Territory of Alaska; that he has read the foregoing Complaint and Petition for Writ of Mandamus and knows the contents thereof, and believes the same to be true.

OSCAR G. OLSON.

Subscribed and sworn to before me this 18th day of August, 1947.

[Seal]

FRANCES G. REGAN,

Notary Public for Alaska.

My commission expires March 21, 1948.

[Endorsed]: Filed Aug. 18, 1947. [3]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS TO PLAINTIFF'S COMPLAINT AND PETITION FOR WRIT OF MANDAMUS AND TO THE ALTERNATIVE WRIT OF MANDAMUS

Come now the defendants above named and in answer to plaintiff's Complaint and Petition for Writ of Mandamus and in answer to the writ, admit, deny and allege as follows:

I.

Defendants admit the allegations contained in paragraph 1 of the Complaint and Petition.

II.

Defendants admit the allegations contained in paragraph 2.

III.

Defendants admit the allegations contained in paragraph 3.

IV.

Defendants admit the allegations contained in paragraph 4.

V.

Referring to the allegations contained in paragraph 5 the defendants deny that the revenues collected through the Veterans' tax to date now permit repayment of the sum of \$350,000 by the Board to the general treasury, which was advanced

to the Board pursuant to the provisions of Section 5 of Chapter 27 of the Session Laws of Alaska, 1946; deny that the revenues collected now permit the repayment by the Board to the general treasury of any portion of the sum of \$350,000.00 and defendants admit each and every other allegation contained in paragraph 5.

VI.

Defendants admit the allegations contained in paragraph 6.

VII.

Defendants deny the allegations contained in in paragraph 7. [4]

VIII.

Defendants admit the allegations contained in paragraph 8.

Affirmative Defense

For the further and affirmative defensive to plaintiff's Complaint and Petition for Writ of Mandamus and to the Alternative Writ of Mandamus defendants allege as follows:

I.

That at the 1946 special session of the Alaska Legislature there was passed an act known and designated as the Alaska World War II Veterans' Act and contained in Chapter 27 of the published session laws of Alaska, 1946 and which act was approved on April 3rd or 4th, 1946.

II.

That the purpose of the act is declared in the second section thereof to be to "partially discharge the obligations of the Territory of Alaska to those of its citizens who are serving or have served in the Army, Navy, Marine Corps or Coast Guard during World War II."

III.

That the act provides for the appointment of a board for the administration of the act which is known and designated as the Alaska World War II Veterans' Board and pursuant to the provisions of the act the Board was created and its members appointed pursuant to law, and they are the defendants Robert E. Ellis, John S. Hellenthal, John M. Cross, L. Embert Demmert and Paul Solka, Jr.

IV.

That the act also provides for the creation of the office of Commissioner of Veterans' Affairs and the defendant Norman Haley was appointed Commissioner of Veterans' Affairs and Executive Officer of the Board and is now and has been at all times mentioned herein the duly appointed and Acting Commissioner of Veterans' Affairs pursuant to the provisions of Chapter 27 of the Session Laws of Alaska, 1946.

V.

That the purpose of the act aforesaid was to pay bonuses and make loans to veterans of World War II as therein provided. [5]

VI.

That Section 7 of the act aforesaid provides that it shall take effect immediately upon its passage and approval, thereby setting up the Board and providing for the operation of the law immediately upon the passage and approval of the act.

VII.

That the act further provides for the creation of a fund through taxation known as a Veterans' Revolving Fund to carry out the purposes and provisions of the Act and to make payment of bonuses and to make loans to veterans and under the provisions of the act loans were to be made and bonuses paid immediately upon the passage and approval of the act.

VIII.

That the tax levied to carry out the purpose of the act went into effect on April 1, 1946 but the first taxes were payable during the month of July, 1946 and in order to provide funds for the immediate application of the provisions of the act to veterans the Legislature enacted Section 5 of the act which reads as follows:

“Section 5. Appropriation. There is hereby appropriated the sum of three hundred fifty thousand dollars (\$350,000.00) for deposit in the Alaska World War II Veterans' Revolving Fund to be used for the purpose of this Act, including expenses of administration; pro-

vided, however, that the Board shall pay back such sum to the Territorial Treasurer as soon as revenues collected through the tax imposed by this Act will permit, but not later than four years after the effective date hereof."

IX.

That the Alaska World War II Veterans' Act went into effect immediately upon its passage and approval and the Board was created and defendant Norman Haley was chosen Commissioner and ever since the date of the passage and approval of the act loans have been made and bonuses paid to veterans as hereinafter set forth.

X.

That there are in the Territory of Alaska eligible for benefits under the provisions of the Act, that is; qualified to receive loans and bonuses, between 6,500 and 7,000 veterans and many applications began to come into the Board as soon as its machinery was set up and the executive [6] officer and commissioner appointed.

XI.

That the total sum of \$1,851,012.35 has been paid in to the Veterans' Fund through taxes up to the date of the issuance of the Alternative Writ herein and branch offices of the Board have been set up as provided by the Act and pursuant to regulations of the Board at Juneau, Anchorage, Fairbanks and Ketchikan and that adding the taxes received as

hereinabove set forth, interest collected and the amount advanced by the Territory from the general fund, the total revenues coming into the hands of the Commissioner to the date of the filing of the complaint herein amount to \$2,227,232.01.

XII.

That the Board has expended \$4,937.34 in the purchase of equipment and it has advanced in loans and bonuses all of the remaining sums coming into the hands of the Commissioner from every source except the sum of \$388,795.38 which was on hand at the date of the issuance of the Writ herein and against which there are applications for bonuses and loans; or in other words the Board and the Commissioner have advanced to the date of the Writ herein, in loans and bonuses \$1,741,044.98 and the Board has also from the fund paid the administrative expenses and all other expenses authorized by the law so that the total sum remaining on hand at the date of the Writ herein was \$388,795.38 as herein above stated.

XIII.

That the Board has made 318 direct loans and 264 are active loans and it has paid 1,207 bonuses and that these loans and bonuses have been sufficient to care for only a little more than 25 per cent of the estimated number of veterans in the Territory who are eligible for loans and bonuses and the Commissioner has pending 937 unpaid applications for bonuses totaling \$348,740.00 and he has pending

applications for 308 loans, none of which have been advanced, and which total \$2,066.320.00 and in addition thereto the Commissioner has received 226 inquiries for bonuses without formal applications and 66 inquiries regarding loans where no formal applications have yet been made.

XIV.

That application has been made to the Board by the Board of Administration of the Territory of Alaska for repayment of the appropriation [7] which was advanced to the Board in April, 1946 in the sum of \$350,000.00 and the Board has declined to authorize repayment for the reason that on account of the small balance of the funds on hand and the large number of applications for loans and bonuses against that fund and in the light of the general purposes of the Act which is to make and guarantee loans and pay bonuses to veterans in partial discharge of the recognized and declared obligations of the Territory to veterans of World War II as declared in Section 2 of the Act, the revenues collected through the tax imposed by the Act will not permit repayment at this time.

XV.

Further answering the Alternative Writ of Mandamus defendants allege that the fund provided by the taxation imposed by the Act and to be known as the Alaska World War II Veterans' Revolving Fund is, under the provisions of the law, required to be used for two purposes; the first of which is to

make and guarantee loans and pay bonuses, and the second of which is to refund to the Territorial Treasury the sum of \$350,000.00 advanced to the fund by the appropriation contained in Chapter 27 of the Session Laws of Alaska, 1946.

XVI.

That the Act provides for the payment of loans and bonuses immediately upon the passage and approval of the Act and the setting up of the administrative machinery and it provides for the repayment of the appropriation advanced by the Territory only when the revenues collected through the tax will permit, provided it is repaid not later than four years after the effective date of the Act.

XVII.

That in the administration of the Act the Board has decided that the time for repayment of the appropriation to the Territory is a matter left to the discretion of the Board and that the intent and purpose of the Act is that the veterans' loans and bonuses should receive first consideration and repayment of the appropriation to the Territory should be the second consideration; provided that payment is made within four years from the date of the passage of the Act, and that the period of four years has not yet expired but only the period of 16 months. [8]

Wherefore, defendants pray that this certain action be dismissed and that the Petition for Writ of

Mandamus be denied and that the Court make all necessary orders as are meet in the premises.

H. L. FAULKNER,
FAULKNER & BANFIELD,
Attorneys for Defendants.

United States of America,
Territory of Alaska—ss.

I, the undersigned, Norman Haley, being first duly sworn, depose and say; that I am one of the defendants hereinabove named and make this affidavit on behalf of all the defendants for the reason that none of the defendants is within 100 miles of the place where this affidavit is required to be made; that I have read the foregoing Answer and know its contents and that the facts stated therein are true and correct as I verily believe.

NORMAN HALEY.

Subscribed and sworn to before me this 22nd day of August, 1947.

[Seal] H. L. FAULKNER,
Notary Public for Alaska.

My Commission expires August 7, 1948.

Copy received August 22, 1947.

RALPH J. RIVERS,
Attorney for Plaintiff.

[Endorsed]: Filed August 22, 1947.

[Title of District Court and Cause.]

REPLY

Comes now the Plaintiff and for reply to the Affirmative Defense contained in the Answer of Defendants to Plaintiff's complaint and petition for writ of Mandamus and to the Alternative Writ of Mandamus, says:

1. Admits the allegations contained in paragraphs numbered I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII and XIII.

2. Plaintiff denies each and every allegation contained in Paragraph numbered XIV, saving and excepting that Plaintiff admits that the Board of Administration of the Territory of Alaska made application to the Alaska World War II Veterans' Board for repayment of the appropriation which was advanced to the Board in April 1946 in the sum of \$350,000.00, and that the said Veterans' Board declined to make such repayment.

3. Plaintiff admits the allegations contained in Paragraph numbered XV save and except that plaintiff denies that the purpose of making and guaranteeing loans and paying bonuses carries priority over the requirement of refunding to the Territorial Treasury the advanced sum of \$350,000.00.

4. Plaintiff admits the allegations contained in Paragraph numbered XVI save and except that plaintiff denies that the intent of the provision regarding repayment of the appropriation is other than mandatory as soon as revenues permit.

5. Plaintiff denies each and every allegation con-

tained in Paragraph numbered XVII save and except that plaintiff admits that the [10] board has decided matters as alleged.

Wherefore, plaintiff affirms the prayer for relief as contained in the complaint herein.

/s/ RALPH J. RIVERS,
Attorney General for Alaska.

/s/ FRANK L. OLIVER,
Assistant Attorney General,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska—ss.

Oscar G. Olson, being first duly sworn, on oath, deposes and says: That he is the plaintiff above named and that he is the duly elected, qualified and acting Treasurer for the Territory of Alaska; that he has read the foregoing Reply and knows the contents thereof, and believes the same to be true.

OSCAR G. OLSON.

Subscribed and sworn to before me this 26th day of August, 1947.

[Seal] FRANCIS G. REGAN,
Notary Public for Alaska.
My commission expires March 21, 1948.

Copy received August 26, 1947.

H. L. FAULKNER,
Attorney for Defendants.

[Endorsed]: Filed Aug. 26, 1947.

[Title of District Court and Cause.]

ORDER

This cause having come on for trial and hearing of the issues, and after argument of counsel for each party, and the court at the conclusion of the hearing having taken the matter under advisement, and now the court being fully advised in the premises; and the court having found and adjudged that the facts set forth in the Alternative Writ of Mandamus issued by this court on the 18th day of August, 1947, have been sustained by the plaintiff herein, and that plaintiff is entitled to the Writ prayed for,

It Is Hereby Ordered and Decreed that a Peremptory Writ of Mandamus be issued commanding and enjoining the defendants herein to issue and deliver to the Territorial Auditor, in regular course, not later than January 31, 1948, a voucher payable to the Territorial Treasury in the amount of \$175,-000.00, and that a voucher in the same amount be issued and so delivered not later than April 30, 1948, and that the defendants also make known to this court at Juneau, Alaska, at 2 o'clock p.m. on February 2, 1948, and again at 2 o'clock p.m. on May 3, 1948, how said defendants shall have executed said Peremptory Writ of Mandamus, and have then and there said writ.

Done this 28th day of August, 1947, at Juneau, Alaska.

GEORGE W. FOLTA,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska 1st Division at Juneau. John H. Walmer, Clerk. [12]

[Title of District Court and Cause.]

EXCEPTION TO ORDER OF COURT

Come now the defendants and except to the order of the Court made and filed herein on August 28, 1947, granting the Peremptory Writ of Mandamus as prayed for in the Complaint and Petition of plaintiff herein.

Dated at Juneau, Alaska, September 25, 1947.

FAULKNER AND BANFIELD,
Attorneys for Defendants.

Copy received September 26th, 1947.

/s/ RALPH J. RIVERS,
Attorney General of Alaska.
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 25, 1947. [13]

[Title of District Court and Cause.]

PEREMPTORY WRIT OF MANDAMUS

To the above entitled Defendants, Greeting:

Whereas, upon trial and hearing of the issues in the above entitled action, this court has duly found and adjudged that the facts set forth in the Alternative Writ of Mandamus issued by this Court on the 18th day of August, 1947, have been sustained by the plaintiff herein and that you should repay to the Territorial Treasury the sum of \$350,000.00 which was appropriated as a loan to the Alaska World War II Veterans' Board by Chapter 27 S. L. A. 1946, through issuance of appropriate

vouchers executed by the Commissioner of Veterans' Affairs, as follows: One of said vouchers in the sum of \$175,000.00 to be issued not later than January 31, 1948, and the other in the same amount to be issued not later than April 30, 1948.

Now, Therefore, the Court deeming that justice should be done in this behalf to the plaintiff herein, does hereby command and enjoin you that not later than January 31, 1948, you issue and forward to the Territorial Auditor in regular course, a voucher payable to the Territorial Treasury in the amount of \$175,000.00, and that a voucher in the same amount be issued and so delivered not later than April 30, 1948;

And this Court does also command that you make known to this Court at Juneau, Alaska, at 2 o'clock p.m. on February 2, 1948, and [14] again at 2 o'clock p.m. on May 3, 1948, how you shall have executed this writ, and have you then and there this writ.

Witness the Hon. George W. Folta, Judge of said Court this 28th day of August, 1947.

[Seal] JOHN H. WALMER,
Clerk.

Copy received August 29, 1947.

FAULKNER AND BANFIELD,
M. J. LYMAN,
Secretary,
Attorney for Defendants.

[Endorsed]: Filed Aug. 29, 1947.

[Title of District Court and Cause.]

PETITION FOR LEAVE TO APPEAL TO
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

Comes now the above named defendants and each of them in the above entitled action and conceiving and believing themselves to be aggrieved by the Order of the above entitled Court entered against them on August 28, 1947, at Juneau, Alaska, and the Peremptory Writ of Mandamus issued on that day, do hereby petition the above entitled Court for leave to appeal from the order and the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby file their Assignments of Error asserted and relied upon by them upon the appeal and they petition that an order be entered herein allowing the applicants and the defendants above named to prosecute this appeal to the United States Circuit Court of Appeals in the manner provided by law and the rules of the Court; and that a citation may issue and be directed to the plaintiff above named, citing him to appear in the United States Circuit Court of Appeals for the Ninth Circuit, 40 days from the date of the citation; and that an order be made directing the Clerk of the above entitled Court to prepare the transcript of record, proceedings and papers, and all of them upon which the order was made and entered, and duly authenticate it and send it to the United States Circuit Court of Appeals for [16] the Ninth Circuit.

Dated at Juneau, Alaska, September 26th, 1947.

FAULKNER & BANFIELD,
Attorney for Petitioners.

Copy received September 26th, 1947.

/s/ RALPH J. RIVERS,
Attorney General of Alaska,
Attorney for Plaintiff.

[Endorsed] Filed Sept. 25, 1947. [17]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Come now the above named defendants and each of them and complain of the judgment rendered and the Order of the Court entered in this cause on August 28, 1947, in the above entitled Court, and the whole thereof, and aver that in the proceedings in this cause manifest error has occurred to the prejudice of the defendants and each of them, of which they make the following

Assignments of Error

which they assert and intend to rely upon in the United States Circuit Court of Appeals for the Ninth Circuit upon an appeal to that Court.

I.

The Order heretofore mentioned entered by the Court on August 28, 1947, directing that a Peremptory Writ of Mandamus be issued commanding the defendants to issue and deliver to the Territorial Auditor in regular course not later than January 31, 1948, a voucher payable to the Territorial

Treasury in the amount of \$175,000.00 and a voucher in the same amount not later than April 30, 1948, is entered contrary to law and without authority of law and that the Peremptory Writ of Mandamus issued pursuant to that order is of no force and effect for the reason that the [18] remedy of mandamus is not proper and not available to plaintiff in the above entitled cause; and the Court erred in making and entering the order and in ordering the Peremptory Writ of Mandamus to issue.

Wherefore defendants and appellants pray that the judgment and order may be reversed.

Dated at Juneau, Alaska, September 26th, 1947.

FAULKNER & BANFIELD,
Attorneys for Defendants.

Copy received this 26th day of September, 1947.

/s/ RALPH J. RIVERS,
Attorney General of Alaska,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 25, 1947. [19]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO APPEAL

Upon reading and filing the petition of the above named defendants and it appearing that the petitioners and defendants have heretofore filed their Notice of Appeal and thereafter filed a cost bond in the sum of \$250.00 and having filed Assignments of Error and petition for allowance of appeal,

Now, Therefore, the law and the premises being fully understood and considered by the Court,

It Is Hereby Ordered That leave be, and hereby is, granted to the petitioners, defendants and appellants to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of the above entitled Court made on August 28, 1947, and entered herein directing the issuance of a Peremptory Writ of Mandamus against the defendants, and

It Is Further Ordered that the Clerk of the District Court for the Territory of Alaska, Division Number One at Juneau be, and he is hereby directed and ordered to prepare and certify a transcript of evidence, exhibits and all records, proceedings, papers and judgment in the above entitled cause and transmit them to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within 40 days from [20] date and it is further ordered that the cost bond on appeal be and it is hereby approved.

It Is Further Ordered that if stay of execution is desired that defendants file herein a supersedeas bond in the sum of \$350,000.00 on or before January 31, 1948, and that the order of the Court heretofore made on August 28, 1947, be stayed from and after the date of the filing and approval of the bond.

Dated at Juneau, Alaska, this 26th day of September, 1947.

/s/ GEO. W. FOLTA,
District Judge.

Copy received September 26th, 1947.

/s/ RALPH J. RIVERS,

Attorney General of Alaska,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 26, 1947. [21]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That we, the above named petitioners and defendants as principal and E. L. Hunter as surety are held and firmly bound under the above named plaintiff and the Territory of Alaska in the sum of \$250.00 to be paid to the Territory of Alaska, and for the payment of which well and truly to be made we bind ourselves and each of us and each of our heirs, executors, administrators and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated the 26th day of September, 1947.

Whereas the above named petitioners and defendants as appellants seek to prosecute an appeal in the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and order rendered in the above entitled action by the District Court for the Territory of Alaska, Division Number One on August 28, 1947,

Now, Therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal [22] to effect and answer all costs and damages that may be adjudged if they

shall fail to make good their appeal, then this obligation to be void, which is otherwise to remain in full force and effect.

THE ALASKA WORLD WAR II VETERANS'
BOARD and ROBERT E. ELLIS, JOHN S.
HELLENTHAL, JOHN M. CROSS, L. EM-
BERT DEMMERT and PAUL SOLKA, JR.,
members of said Board, and NORMAN
HALEY, executive officer of said Board.

By /s/ H. L. FAULKNER,

Their Agent and Attorney.

/s/ E. L. HUNTER,

Surety.

United States of America,
Territory of Alaska—ss.

I, the undersigned whose name is subscribed to the foregoing Cost Bond on Appeal as surety thereon, being first duly sworn, depose and say: That I am a resident of Juneau, Alaska, over the age of 21 years and not an attorney or counselor at law, marshal, deputy marshal, clerk of any court or other officer of any court and that I am worth the sum of \$500.00 over and above all my just debts and liabilities exclusive of property exempt from execution.

/s/ E. L. HUNTER.

Subscribed and sworn to before me this 26th day of September, 1947.

/s/ MARY JANE LYMAN,

Notary Public for Alaska.

My commission expires Aug. 7, 1948.

Approved this 26th day of September, 1947.

/s/ GEO. W. FOLTA,

Judge.

Copy received 26th day of September, 1947.

/s/ RALPH J. RIVERS,

Attorney General for Alaska,

Attorney for Plaintiff.

[Endorsed]: Filed. [23]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above named petitioners and defendants hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order of the Court entered in the above entitled cause on August 28, 1947, in which order a Peremptory Writ of Mandamus is commanded to be issued against the defendants commanding them to pay over to the Territorial Treasury of Alaska the sum of \$175,000.00 not later than January 31, 1948, and the same sum not later than April 30, 1948.

Dated at Juneau, Alaska, September 26th, 1947.

/s/ H. L. FAULKNER,

Attorneys for Defendants
and Petitioners.

Copy received September 26th, 1947.

/s/ RALPH J. RIVERS,

Attorney General of Alaska,
Attorney for Plaintiffs.

[Endorsed]: Filed Sept. 26, 1947. [24]

[Title of District Court and Cause.]

CITATION

The President of the United States of America to
Territory of Alaska, ex rel Oscar G. Olson,
Plaintiff Above Named, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals in the City of San Francisco, State of California, within 40 days from the date hereof, pursuant to an order allowing an appeal, of record in the Office of the Clerk of the District Court for the Territory of Alaska, Division Number One at Juneau, wherein The Alaska World War II Veterans' Board and Robert E. Ellis, John S. Hellen-thal, John M. Cross, L. Embert Demmert and Paul Solka, Jr., members of said Board, and Norman Haley, executive officer of said Board, defendants above named, are appellants, and you are appellee, to show cause, if any there be, why the judgment and order rendered against the appellants, as in the order allowing the appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Geo. W. Folta, Judge of the United States District Court for the Territory of Alaska, Division Number One, at Juneau, the 26th day of September, 1947. [25]

/s/ GEORGE W. FOLTA,

United States District Judge,
Territory of Alaska,
Division Number One.

Copy received September 26th, 1947.

/s/ RALPH J. RIVERS,

Attorney General of Alaska,
Attorney for Appellees.

[Endorsed]: Filed Sept. 26, 1947. [26]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby stipulated and agreed between Ralph J. Rivers, Attorney General of Alaska and attorney for plaintiff-appellee in the above entitled cause, and Faulkner and Banfield, attorneys for defendants-appellants, that upon the appeal in this cause no supersedeas bond need be filed prior to January 31, 1948, and that execution and the order of the Court may be stayed only from the time of filing of the supersedeas bond.

It Is Further Stipulated that in printing the record in this cause on appeal the title of all papers may be omitted.

Dated at Juneau, Alaska, September 26th, 1947.

/s/ RALPH J. RIVERS,

Attorney General for Alaska,
Attorney for Plaintiff-
Appellee.

FAULKNER & BANFIELD,
Attorneys for Defendants-
Appellants.

[Endorsed]: Filed Sept. 26, 1947. [27]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above Entitled Court:

Please prepare as the record on appeal in the above entitled cause the following:

1. Complaint and Petition for Writ of Mandamus.

2. Answer of Defendants to Plaintiff's Complaint and Petition and to the Alternative Writ of Mandamus.

3. Reply of Plaintiff.

4. Order of the Court dated August 28, 1947, directing issuance of Peremptory Writ of Mandamus, and exception thereto.

5. Peremptory Writ of Mandamus dated August 28, 1947.

6. Petition for Leave to Appeal to the Circuit Court of Appeals.

7. Assignment of Error.

8. Order Granting Leave to Appeal.

9. Notice of Appeal.

10. Cost Bond on Appeal.

11. Citation.

12. This Praecipe.

13. Stipulation re supersedeas bond and printing of record.

Dated at Juneau, Alaska, September 26th, 1947.

FAULKNER & BANFIELD,
Attorneys for Defendants-
Appellants.

Copy received September 26th, 1947.

/s/ RALPH J. RIVERS,

Attorney General of Alaska,
Attorney for Plaintiff-
Appellees.

[Endorsed]: Filed Sept. 26, 1947. [29]

[Title of District Court and Cause.]

CERTIFICATE

I, John H. Walmer, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the foregoing and hereto attached 29 pages of typewritten matter, numbered from 1 to 29, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the Appellant on file herein and made a part hereof, in cause No. 5753-A, wherein The Alaska World War II Veterans' Board et al, are Defendant-Appellants and the Territory of Alaska, ex rel Oscar G. Olson is Plaintiff-Appellee, as the same appears of record and on file in my office; that said record is by virtue of an appeal and Citation issued in this cause and the return thereof in accordance therewith.

And I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certification amounting to Four & 70/100 Dollars has been paid to me by Counsel for Appellant.

In Witness Whereof, I have hereunto set my hand and the seal of the above-entitled court this 7th day of October, 1947.

[Seal] JOHN H. WALMER,
Clerk.

By /s/ J. W. LEIVERS,
Deputy.

[Endorsed]: No. 11756. United States Circuit Court of Appeals for the Ninth Circuit. The Alaska World War II Veterans' Board and Robert Ellis, John S. Hellenthal, John M. Cross, L. Embert Demmert and Paul Solka, Jr., members of said Board, and Norman Haley, executive officer of said Board, Appellants, vs. Territory of Alaska, ex rel Oscar G. Olson, Appellee. Transcript of Record. Upon Appeal from the District Court of the Territory of Alaska, Division Number One.

Filed October 13, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

